



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

MAR - 8 2017

REPLY TO THE ATTENTION OF:

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Timmery Fitzpatrick  
Senior Environmental Attorney  
Clean Harbors  
P.O. Box 9149  
42 Longwater Drive  
Norwell, Massachusetts 02061-9149  
Fitzpatrick.timmery@cleanharbors.com

Re: Safety-Kleen Systems, Inc., East Chicago, Indiana  
Consent Agreement and Final Order  
Docket No. **CERCLA-05-2017-0004**

Dear Ms. Fitzpatrick:

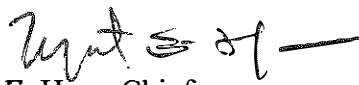
Enclosed please find a copy of the fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the original CAFO with the Regional Hearing Clerk on March 8, 2017.

Please have your client pay the CERCLA civil penalty in the amount of \$39,384 in the manner prescribed in paragraphs 28 and 29, and reference your check with the billing document number 2751730B004 and the docket number CERCLA-05-2017-0004.

The payment is due on April 7, 2017.

Please feel free to contact Ruth McNamara at (312) 353-3193 or by email at [mcnamara.ruth@epa.gov](mailto:mcnamara.ruth@epa.gov) if you have any questions regarding the enclosed documents. Please direct any legal questions to Puja Lakhani, Associated Regional Counsel, at (312) 353-3190 or by email at [Lakhani.puja@epa.gov](mailto:Lakhani.puja@epa.gov). Thank you for your assistance in resolving this matter.

Sincerely,

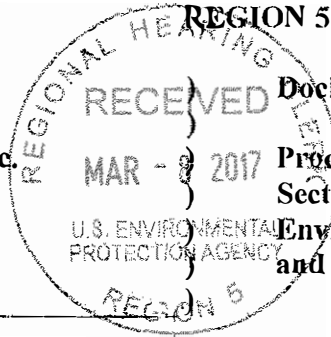
  
Michael E. Hans, Chief  
Chemical Emergency Preparedness  
and Prevention Section

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of:

Safety-Kleen Systems, Inc.  
East Chicago, Indiana

Respondent.



Docket No. CERCLA-05-2017-0004

Proceeding to Assess a Civil Penalty Under  
Section 109(b) of the Comprehensive  
Environmental Response, Compensation,  
and Liability Act

**Consent Agreement and Final Order**  
**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 109(b) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609(b), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is, by lawful delegation, the Chief of Emergency Response Branch #1, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is Safety-Kleen Systems, Inc., a corporation, doing business in the State of Indiana.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

**Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

**Statutory and Regulatory Background**

9. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires any person in charge of a facility to immediately notify the National Response Center (NRC) as soon as that person has knowledge of any release of a hazardous substance from the facility in an amount equal to or greater than the hazardous substance's reportable quantity.

10. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), provides a mechanism to alert federal agencies that a response action may be necessary to prevent deaths or injuries to emergency responders, facility personnel and the local community. A delay or failure to notify could seriously hamper the government's response to an emergency and pose serious threats to human health and the environment.

11. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty to \$37,500 per day of violation for violations that occurred after January 12, 2009.

### **Factual Allegations and Alleged Violations**

12. Respondent is a “person” as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

13. At all times relevant to this CAFO, Respondent was in charge of a facility located at 601 Riley Road, East Chicago, Indiana (facility).

14. Respondent’s facility consists of a building and area where a hazardous substance has been stored.

15. Respondent’s facility is a “facility” as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

16. Chlorine CAS # 7782-60-5 is a “hazardous substance” as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

17. Chlorine CAS # 7782-60-5 has a reportable quantity of 10 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

18. On May 25, 2012, at or about 12:15 p.m. (CT), a release occurred from Respondent’s facility of approximately 97.1 pounds of chlorine (the release).

19. In a 24 hour time period, the release of chlorine exceeded 10 pounds.

20. During the release, approximately 97.1 pounds discharged into the ambient air.

21. The release is a “release” as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

22. Respondent had knowledge of the release on May 25, 2012, at approximately 12:45 p.m. (CT).

23. Respondent notified the NRC of the release on December 3, 2016.

24. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the release.

25. Respondent's failure to notify immediately the NRC of the release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

**Civil Penalty**

26. Complainant has determined that an appropriate civil penalty to settle this action is \$39,384 for the CERCLA violation. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violation, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violation and any other matters as justice may require. Complainant also considered U.S. EPA's Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act, dated September 30, 1999 (EPCRA/CERCLA Enforcement Response Policy).

27. Respondent must pay the \$39,384 civil penalty within 30 days of the effective date of this CAFO.

28. Respondent must pay the penalty by sending a cashier's or certified check, payable to "EPA Hazardous Substance Superfund," to:

U.S. Bank  
Government Lockbox 979076  
U.S. EPA Superfund Payments  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101

The check must note the following: Safety-Kleen Systems, Inc., the docket number of this CAFO, and the billing document number 2751730B004.

29. A transmittal letter, stating the Respondent's name, case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk, (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

Ruth McNamara, (SC-5J)  
Chemical Emergency Preparedness  
and Prevention Section  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

Puja Lakhani, (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

30. This civil penalty is not deductible for federal tax purposes.

31. If Respondent does not timely pay the civil penalty as described in paragraph 27, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

32. If Respondent does not timely pay the civil penalty U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties

and the United States enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

33. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

#### **General Provisions**

34. Consistent with the “Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules,” dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: [lakhani.puja@epa.gov](mailto:lakhani.puja@epa.gov) (for Complainant), and [fitzpatrick.timmery@cleanharbors.com](mailto:fitzpatrick.timmery@cleanharbors.com) (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

35. This CAFO resolves only Respondent’s liability for federal civil penalties for the violations alleged in the CAFO.

36. This CAFO does not affect the rights of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

37. Respondent certifies that it is complying with Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

38. This CAFO does not affect Respondent's responsibility to comply with CERCLA and other applicable federal, state and local laws and regulations.

39. This CAFO is a "final order" for purposes of U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

40. The terms of this CAFO bind Respondent and its successors and assigns.


41. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

42. Each party agrees to bear its own costs and attorney's fees in this action.

43. This CAFO constitutes the entire agreement between the parties.


**Safety-Kleen Systems, Inc., East Chicago, Indiana, Respondent**

2/21/2017  
Date


  
\_\_\_\_\_  
William F. Connors  
Senior Vice President of Compliance  
Safety-Kleen System, Inc.

**U.S. Environmental Protection Agency, Complainant**

3/3/17  
Date

  
for Jason H. El-Zein, Chief  
Emergency Response Branch 1  
U.S. Environmental Protection Agency  
Region 5

3/3/2017  
Date


  
for Douglas Ballotti, Acting Director  
Superfund Division  
U.S. Environmental Protection Agency  
Region 5

**In the Matter of: Safety-Kleen Systems, Inc., East Chicago, Indiana**  
**Docket No. CERCLA-05-2017-0004**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

march 7 2017  
Date

  
\_\_\_\_\_  
Ann L. Coyle  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 5

**In the Matter of: Safety-Kleen Systems, Inc., East Chicago, Indiana**  
**Docket No. : CERCLA-05-2017-0004**

**Certificate of Service**

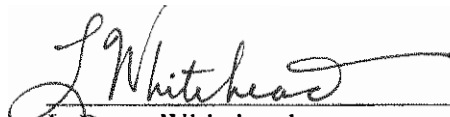
I certify that I sent a true and correct copy of the foregoing Consent Agreement and Final Order, which was filed on March 8, 2017 in the following manner to the addressees:

Copy by E-mail to  
Attorney for Respondent: Timmery Fitzpatrick  
Fitzpatrick.timmerv@cleanharbors.com

Copy by E-mail to  
Attorney for Complainant: Puja Lakhani  
lakhani.puja@epa.gov

Copy by E-mail to  
Regional Judicial Officer: Ann Coyle  
coyle.ann@epa.gov

Dated: March 8, 2017

  
LaDawn Whitehead  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5